

DEC - 7 1993

ENVIRONMENTAL
HEARINGS OFFICE

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

THOMAS S. HAZEN; CHARLAIN
HAZEN; WESLEY D. HAZEN;
VERNIE NEWLAND; BURTON C.
NEWLAND; and BRUCE BUCHANAN,

PCHB Nos. 93-33 & 34

Appellants,

ORDER GRANTING
ECOLOGY'S MOTION FOR
SUMMARY JUDGMENT

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY; and
DEPARTMENT OF WILDLIFE,

Respondents.

This matter having come for hearing before the Washington State Pollution Control Hearings Board on the 19th of October, 1993 on the Department of Ecology's Motion for Summary Judgment. This action is a result of an appeal from the Department of Ecology's Report of Examination, which found that Ground Water Permit No. G4-30247 should issue to the Department of Wildlife.

Appellants Thomas Hazen, Charlain Hazen, Vernie Newland, and Burton Newland appeared pro se; appellant Bruce Buchanan appeared through his attorney, Douglas Peters; respondent Department of Wildlife appeared through its attorney, Marilyn Mockensturm; and respondent Department of Ecology appeared through its attorney, Deborah L. Mull.

1 In ruling on the Motion for Summary Judgment, the following
2 documents were considered by the Washington State Pollution
3 Control Hearings Board:

- 4 1. Memorandum in Support of Department of Ecology's
5 Motion for Summary Judgment, including Exhibits 1
6 through 6.
- 7 2. Affidavit of Bruce Buchanan in Opposition to State's
8 Motion for Summary Judgment.
- 9 3. Appellant Bruce Buchanan's Memorandum in Opposition to
10 Motion for Summary Judgment, excluding attachment.

11 The Washington State Pollution Control Hearings Board,
12 having heard argument and having considered the exhibits and
13 memorandum outlined above, makes and enters the following:

14 FINDINGS OF FACT

15 I.

16 The Department of Ecology timely filed its Motion for
17 Summary Judgment on September 22, 1993.

18 II.

19 The October 6, 1993 Affidavit of Bruce Buchanan was
20 admitted and considered. The information contained in that
21 affidavit was conclusionary in nature and did not create any
22 issues of material fact in opposition to the Motion for Summary
23 Judgment.

24 III.

25 The appellants have sufficient interest in this case to
26 participate in the action, but have failed to establish that

1 their interests will be impaired by the granting of Permit
2 No. G4-30247.

3 IV.

4 There is sufficient water available to issue Permit
5 No. G4-30247.

6 V.

7 The creation of an artificial wetland for the maintenance
8 and enhancement of game and other aquatic life is a beneficial
9 use of the water.

10 VI.

11 The granting of Permit No. G4-30247 is in the public
12 interest.

13 CONCLUSIONS OF LAW

14 I.

15 The Washington State Pollution Control Hearings Board has
16 jurisdiction over the subject matter and parties involved in
17 this action.

18 II.

19 The appellants have standing to participate in this action.

20 III.

21 As no material issues of fact exist, summary judgment is
22 appropriate.

23 IV.

24 In issuing its Report of Examination for Ground Water
25 Permit No. G4-30247, Ecology complied with RCW 90.03.290 and ch.
26 90.54 RCW.

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Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

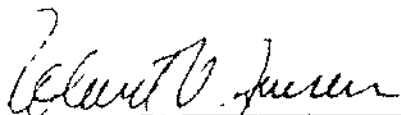
Parties further agree that the Pollution Control Hearings Board may enter the following Order.

ORDER

The Department of Ecology's Report of Examination for Ground Water Permit No. G4-30247 is affirmed in all regards.

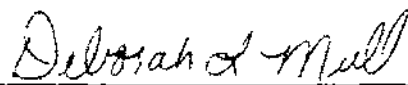
DATED this 22nd day of DECEMBER, 1993.

POLLUTION CONTROL HEARINGS BOARD


ROBERT V. JENSEN, Attorney Member


RICHARD C. KELLEY, Member

Presented by:


Deborah L. Mull
Assistant Attorney General